

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 02-2551

United States of America,

Appellee,

v.

Everett Smith,

Appellant.

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Appeal from the United States
District Court for the Western
District of Missouri.
[UNPUBLISHED]

Submitted: December 26, 2002

Filed: January 3, 2003

Before BOWMAN, WOLLMAN, and BYE, Circuit Judges.

PER CURIAM.

Everett Smith pleaded guilty to possessing with intent to distribute more than 5 grams of cocaine base, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(B), and the district court¹ sentenced him to 75 months of imprisonment and 5 years of supervised release. On appeal, counsel has moved to withdraw under Anders v. California, 386 U.S. 738 (1967), and has filed a brief arguing that Smith should not have received a

¹The Honorable Fernando J. Gaitan, Jr., United States District Judge for the Western District of Missouri.

2-level dangerous-weapon enhancement because it was clearly improbable that the weapon Smith possessed was connected with the offense.

We find that the 2-level enhancement was not erroneous, as it is undisputed that Smith possessed a loaded handgun during the drug transaction underlying his offense. See U.S.S.G. § 2D1.1, comment. (n.3) (adjustment should be applied if weapon was present unless clearly improbable it was connected with offense); United States v. Cave, 293 F.3d 1077, 1079 (8th Cir. 2002) (district court's factual determinations leading to enhancement are reviewed for clear error and legal conclusions are reviewed de novo); United States v. Fladten, 230 F.3d 1083, 1086 (8th Cir. 2000) (per curiam) (government need not show defendant used or even touched weapon to show connection; court's finding that defendant transported gun to house, along with drugs and drug paraphernalia, supported 2-level enhancement).

Following our independent review, see Penson v. Ohio, 488 U.S. 75 (1988), we find no nonfrivolous issues. Accordingly, the judgment is affirmed. We also grant counsel's motion to withdraw.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.